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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,312	03/17/2004	NancyLou E. Peters	NP-P01US	5795
7590 11/04/2004 VINCENT G. LOTEMPPIO 2211 SHERIDAN DR BUFFALO, NY 14223			EXAMINER PAYER, HWEI SIU CHOU	
			ART UNIT	PAPER NUMBER

3724

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/803,312

Applicant(s)

PETERS, NANCYLOU E. CN

Examiner

Hwei-Siu C. Payer

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Detailed Action

Drawings Objection

The drawings are objected to because:

(1) In Figs.1 and 2, reference numeral "42" has not been described in the specification.

(2) In Fig.2, reference character "x" has not been described in the specification.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Objection to the Specification

The disclosure is objected to because of the following informalities:

(1) On page 6, paragraph [0028], line 4, "handle 40" should read --handle 24--.

(2) On page 7, paragraph [0030], line 2, "4A" should read --FIG. 4A--.

Appropriate correction is required.

Claims Rejection - 35 U.S.C. 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Tracy (U.S. Patent No. 5,920,991).

Tracy discloses a device comprising a handle (12) having a first end (18) and a second end (20), the handle (12) having at least one U-shaped blade (14) extending from the first end (18), and the blade (14) having at least one sharp cutting edge (22) as claimed.

The statement of intended use (i.e. for carving into a carrot, is used to carve the carrot into a shape of a stalk of celery) adds no structure to and is of no patentable import in the claimed device. Further, since Tracy's device shows all the claimed structure, it is held that Tracy's device is fully capable of perform the function of carving into a carrot.

3. Claims 1-5 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Naville, Jr. et al. (U.S. Patent No. 6,722,042).

The carving device (Figs.11 and 12) of Naville Jr. et al. shows all claimed structure.

Claims Rejection - 35 U.S.C. 103(a)

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Naville Jr. et al. (U.S. Patent No. 6,722,042) in view of Martin (U.S. Patent No. 3,861,087).

The carving device (Figs.11 and 12) of Naville Jr. et al. shows all the claimed structure except for the claimed ring.

Martin shows a tool (10) comprising a ring (see Fig.1) affixed to one end of a tool handle (14) opposite a tool working element (12) disposed at the other end of the tool handle (14).

It would have been obvious to one skilled in the art to modify Naville Jr. et al. by providing the tool handle with a ring to facilitate hanging the tool when not in use as taught by Martin.

3. Claims 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Naville, Jr. et al. (U.S. Patent No. 6,722,042) and Martin (U.S. Patent No. 3,861,087) as applied to claim 6 above, and further in view of Westmoreland (U.S. Patent No. 4,481,689).

The carving device (Figs.11 and 12) of Naville Jr. et al. as modified above shows all the claimed structure except it lacks at least one thumb groove.

Westmoreland shows a tool comprising a handle having at least one thumb groove (16/18) proximate one end of the tool handle from which a blade (38) extends.

It would have been obvious to one skilled in the art to further modify Naville Jr. et al. by providing the tool handle with at least one groove for receiving a user's thumb for holding comfort as taught by Westmoreland.

4. Claims 8, 10 and 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Naville, Jr. et al. (U.S. Patent No. 6,722,042), Martin (U.S. Patent No. 3,861,087) and Westmoreland (U.S. Patent No. 4,481,689) as applied to claims 7 and 9 above, and further in view of Girrbach et al. (U.S. Patent No. 4,464,838).

The carving device (Figs.11 and 12) of Naville Jr. et al. as modified above shows all the claimed structure except the handle does not have a tapered center portion.

Girrbach et al. shows a hand tool comprising an elongated handle (10) having a tapered center portion (18).

It would have been obvious to one skilled in the art to further modify Naville Jr. et al. by making the tool handle elongated and having its center portion tapered for a firm grasp of the hand tool as taught by Girrbach et al.

Prior Art Citations

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Stuart, Popeil et al., Sinclair, Mielnicki, McNeill, II and Hornsby are cited as art of interest.

Point of Contact


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hwei-Siu C. Payer whose telephone number is 703-308-

1405. The examiner can normally be reached on Monday through Friday, 7:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 703-308-1082. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for official communications and 703-746-3293 for proposed amendments.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

H Payer
November 1, 2004


Hwai-Siu Payer
Primary Examiner